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the Sports Shinko Companies

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

AUG 31 2007
at 4 o'clock and 10 min. M.
SUE BEITIA, CLERK

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AUG 30 2007
J. S. R. K.
CLERK, U.S. DISTRICT COURT
DISTRICT OF HAWAII

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD.,	)	CV 04-00124 BMK
	)	CV 04-00127 BMK
Plaintiff,)	
	)	CONSOLIDATED CASES
vs.)	
	)	STIPULATION AND ORDER
QK HOTEL, LLC, et al.,	)	TO FILE REDACTED COPIES
	)	OF EXHIBITS 2A AND 2B TO
Defendants,	)	KG'S SECOND AMENDED
and	)	MOTION TO COMPEL;

FRANKLIN K. MUKAI, et al.,	)	EXHIBITS 3 AND 5 TO
	)	SPORTS SHINKO'S
Third-Party Plaintiffs,	)	OPPOSITION TO THE
	)	SECOND AMENDED MOTION
vs.	)	TO COMPEL, AND EXHIBIT
	)	15 TO KG'S REPLY
SPORTS SHINKO (USA) CO.,	)	MEMORANDUM IN SUPPORT
LTD., et al.,	)	OF THE SECOND AMENDED
	)	MOTION TO COMPEL
)	
Third-Party)	
Defendants,)	
)	
and)	
)	
SPORTS SHINKO (HAWAII) CO.,)	
LTD., et al.,)	
)	
Third-Party Defendants/)	
Counterclaimants,)	
)	
vs.)	
)	
QK HOTEL, LLC, et al.,)	
)	
Third-Party Counterclaim)	
Defendants.)	
)	
AND CONSOLIDATED CASES)	
_____)	
)	

**STIPULATION AND ORDER TO FILE REDACTED COPIES OF
EXHIBITS 2A AND 2B TO KG'S SECOND AMENDED MOTION TO
COMPEL; EXHIBITS 3 AND 5 TO SPORTS SHINKO'S OPPOSITION
TO THE SECOND AMENDED MOTION TO COMPEL, AND EXHIBIT
15 TO KG'S REPLY MEMORANDUM IN SUPPORT OF THE SECOND
AMENDED MOTION TO COMPEL**

Plaintiffs and Third Party Defendants Sports Shinko Co.,
Ltd., Sports Shinko (USA) Co., Ltd., Sports Shinko (Hawaii) Co.,
Ltd., Sports Shinko (Mililani) Co., Ltd., Sports Shinko (Kauai) Co.,
Ltd., Sports Shinko (Pukalani) Co., Ltd., Sports Shinko (Mililani)
Co., Ltd., Sports Shinko (Waikiki) Corporation, and Ocean Resort
Hotel Corporation (collectively "**Sports Shinko**"), and Defendants,
Third Party Plaintiffs and Third Party Counterclaim Defendants KG
Holdings, LLC, QK Hotel, LLC, OR Hotel, LLC, Pukalani Golf Club,
LLC, KG Maui Development, LLC, Mililani Golf Club, LLC, Kiahuna
Golf Club, LLC and KG Kauai Development, LLC (collectively, "**KG**"),
and Defendant and Third Party Plaintiff Franklin Mukai ("**Mukai**"),
through their respective counsel, hereby recite and stipulate as
follows:

RECITALS:

WHEREAS on May 4, 2007, KG filed a Second Amended Motion to Compel Discovery (the "Motion"). KG filed exhibits 2A and 2B to the Declaration of Robert A. Marks in support of the Motion under seal;

WHEREAS on May 14, 2007, Sports Shinko filed a memorandum in opposition to the Motion. In connection with its opposition, Sports Shinko filed Exhibits 2, 3, and 5 ¹ to the Declaration of Jason H. Kim under seal.

WHEREAS on May 21, 2007, KG filed a reply memorandum in support of the Motion. In connection with its reply, KG filed Exhibits 14 and 15 ² to the Declaration of Robert A. Marks under seal.

¹ In response to the Motion, Sports Shinko filed Exhibits 2, 3, and 5 under seal. Exhibit 2 is a copy of a June 5, 1990 promissory note to between Sports Shinko, Ltd., and Sports Shinko Waikiki. KG filed this promissory note publically since it was not marked "confidential" when produced as Exhibit 9A in support of the Motion to Compel. Since the promissory note has already been publically filed, Sports Shinko will file it without redaction.

² Exhibit 14 to KG's Reply Memorandum, which was filed under seal, is KG's Motion for Partial Summary Judgment and Concise Statement of Facts in support thereof, filed in these consolidated cases on May 10, 2007, together with all supporting documents and exhibits. This partial summary judgment motion and supporting documents contain protected tax and financial information. Since Sports Shinko's opposition to the summary judgment motion and KG's reply, neither of which have been filed as of this date, will likely contain similar protected information, the parties agree to file, with the Court's permission, redacted copies of KG's motion and related documents when briefing on that motion is complete.

WHEREAS Sports Shinko asserts that Exhibits 2A and 2B to the Declaration of Robert A. Marks in support of the Motion, Exhibits 3 and 5 to the Declaration of Jason H. Kim in support of Sports Shinko's Opposition to the Motion, and Exhibit 15 to the Declaration of Robert A. Marks in support of the KG Parties' Reply Memorandum in Support of the Motion contain financial and tax income information related to Sports Shinko and certain third parties designated as confidential under the Stipulated Protective Order entered on January 25, 2005, and Sports Shinko seeks to protect that information from public disclosure through redacting the exhibits, declarations, and memorandum as more fully set forth below;

WHEREAS the Sports Shinko Parties assert that "no one outside the litigation is seeking to unseal the motion or responses" or the exhibits (*see Madsen v. Fortis Benefits Ins. Co.*, No. CV 04-1959-PHX-JAT, 2006 WL 1981785 (D. Ariz. Jul. 13, 2006));

WHEREAS 26 U.S.C. § 6103 and other provisions of the Internal Revenue Code protect the confidentiality of “return information” as defined in IRC §§ 6103(b)(2);

WHEREAS “return information” is not available to the public. *See Church of Scientology v. IRS*, 484 U.S. 9, 18 (1987); *Kamman v. United States IRS*, 56 F.3d 46, 48 (9th Cir. 1995);

WHEREAS the Sports Shinko Parties assert that Exhibits 2A - 2B to Mr. Marks’ Declaration are the December 30, 2004 Loan Purchase Agreement (“LPA”) between Sports Shinko Co, Ltd., and South Wind Realty Finance (Cayman) Company and the Supplement to the LPA.

The LPA and Supplement contain confidential financial information such as the purchase price paid by South Wind for the Sports Shinko’s inter-company loans, charts identifying the debtor Sports Shinko entities, dates of borrowing, and the amounts of outstanding interest and principal on the inter-company loans.

Exhibit 3 to Mr. Kim’s Declaration is Sports Shinko Hawaii’s 2002 Financial Statement. It contains the company’s balance sheet, its statement of operations and cash flows, and

supplementary information about the company and its subsidiaries.

This information is confidential financial information that is not generally available to the public, and Sports Shinko asserts that Exhibits 2A, 2B and 3 should be redacted as shown in the attached Exhibits to this Stipulation to prevent disclosure of such information;

WHEREAS Sports Shinko asserts that Exhibit 5 to Mr. Kim's Declaration and Exhibit 15 to Mr. Marks' Declaration, which consist of emails between Sports Shinko USA and its accountants contain information used to prepare Sports Shinko USA's 2004 tax returns. The emails include information about the taxpayer's identity, the amount of income, deductions and tax due. This confidential information is "return information," and Sports Shinko asserts these exhibits should be redacted as shown in the attached Exhibits to this Stipulation to prevent disclosure of such information;

WHEREAS the Sports Shinko Parties waive the initial claim of confidentiality under the January 25, 2005 Stipulated

Protective Order as to the information not proposed to be redacted as set forth above;

WHEREAS the Sports Shinko Parties assert that *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006), should not apply under the circumstances here, and that, nevertheless, safeguarding the confidentiality of the information in the exhibits constitutes a “compelling reason” to permit these exhibits to be filed as redacted in the attached Exhibits; and

WHEREAS the non-Sports Shinko parties do not necessarily agree to or otherwise concede the accuracy of the assertions made in the preceding whereas clauses, and the non-Sports Shinko parties in the interest of judicial economy do not object to the filing of the exhibits, as redacted in the attached Exhibits in connection with the disposition of the Motion, provided that this stipulation does not affect in any respect either the non-Sports Shinko parties’ substantive rights in this litigation or the future treatment of the documents and/or information so redacted;

WHEREAS, counsel for the Sports Shinko has served on chambers of the Court unredacted versions of the documents

referenced above and, upon approval of this Stipulation, will submit to the Clerk the documents referenced above in redacted form to be filed publically and the document, without redactions, to be filed under seal.

NOW THEREFORE the Parties stipulate as follows:

A. Exhibits 2A -2B to the Declaration of Robert A.

Marks in support of the Motion may be filed in the public record as redacted and attached hereto and the document, without redactions, may be filed under seal; and

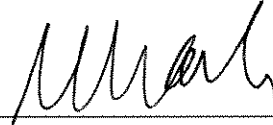
B. Exhibits 3 and 5 to the Declaration of Jason H. Kim

in opposition to the Motion may be filed in the public record as redacted and attached hereto and the document, without redactions, may be filed under seal; and

C. Exhibit 15 to the Declaration of Robert A. Marks in

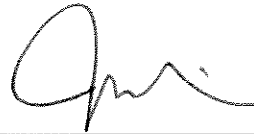
support of KG's reply memorandum in support of the Motion may be filed in the public record as redacted and attached hereto and the document, without redactions, may be filed under seal.

DATED: Honolulu, Hawai'i, August 30, 2007.



WARREN PRICE, III
ROBERT A. MARKS

Attorneys for KG Holdings, LLC, QK Hotel, LLC, OR Hotel, LLC, Pukalani Golf Club, LLC, KG Maui Development, LLC, Mililani Golf Club, LLC, Kiahuna Golf Club, LLC and KG Kauai Development, LLC



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Attorneys for Franklin Mukai

ORDER

The Court, having reviewed the foregoing Stipulation, the exhibits thereto and the unredacted versions of Exhibits 2A -2B to the Declaration of Robert A. Marks in support of KG's Motion, Exhibits 3 and 5 to the Declaration of Jason H. Kim in opposition to KG's Motion, and Exhibit 15 to the Declaration of Robert A. Marks in support of KG's reply memorandum in support of the Motion, which documents were delivered without redactions to the Court's chambers;

HEREBY FINDS AND ORDERS as follows:

1. There are sufficient reasons to support the filing of Exhibits 2A -2B to the Declaration of Robert A. Marks in support of KG's Motion, Exhibits 3 and 5 to the Declaration of Jason H. Kim in opposition to the Motion, and Exhibit 15 to the Declaration of Robert A. Marks in support of KG's reply memorandum in support of the Motion in redacted form as attached to this Stipulation and Order.

2. There are sufficient reasons to support the filing of Exhibits 2A -2B to the Declaration of Robert A. Marks in support of KG's Motion, Exhibits 3 and 5 to the Declaration of Jason H. Kim in opposition to the Motion, and Exhibit 15 to the Declaration of Robert A. Marks in support of KG's reply memorandum in support of the Motion under seal without redactions.

Dated: Honolulu, Hawai'i, 8. 31. 2007.



United States Magistrate Judge

STIPULATION AND ORDER TO FILE REDACTED COPIES OF EXHIBITS 2A AND 2B TO KG'S SECOND AMENDED MOTION TO COMPEL; EXHIBITS 3 AND 5 TO SPORTS SHINKO'S OPPOSITION TO THE SECOND AMENDED MOTION TO COMPEL, AND EXHIBIT AND 15 TO KG'S REPLY MEMORANDUM IN SUPPORT OF THE SECOND AMENDED MOTION TO COMPEL, *Sports Shinko Co., Ltd. v. QK Hotel, LLC, et al.*, D. Hawaii Civil Nos. CV4-00124 BMK and CV4-00124 BMK